2015

State of Utah, Plaintiff/Appellee, v. James Raphael Sanchez, Defendant/Appellant : Brief of Appellant

Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH,	:	
Plaintiff/Appellee,	:	
v.	:	
JAMES RAPHAEL SANCHEZ,	:	Case No. 20140749-CA
Defendant/Appellant.	:	Appellant is incarcerated.

BRIEF OF APPELLANT

Appeal from a judgment of conviction for Murder, a first degree felony, in violation of Utah Code §76-5-203, and Obstructing Justice, a second degree felony, in violation of Utah Code §76-8-306(1), in the Third Judicial District, in and for Salt Lake County, State of Utah, the Honorable Denise P. Lindberg presiding.

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INTRODUCTION

James Raphael Sanchez (James) appeals his convictions for murder and obstructing justice. He challenges his murder conviction on the ground that the trial court wrongfully excluded evidence of out-of-court statements that James proffered under Rule 106 of the Utah Rules of Evidence. James proffered the evidence to support his theory of the case: special mitigation based on extreme emotional distress. The evidentiary exclusion was prejudicial because it precluded James from presenting this theory. James also challenges his obstructing justice conviction on the ground that the evidence was insufficient to support it.

JURISDICTIONAL STATEMENT

This Court has jurisdiction under Utah Code Ann. §78A-4-103 (2)(j). *See* Addendum A (Sentence, Judgment, Commitment); R.726-27, 738-41, 746.

STATEMENT OF THE ISSUES, STANDARD OF REVIEW, PRESERVATION

Issue I: In a recorded statement to police, James confessed to the assault that

caused the death of Angela Jenkins (Angela) and explained that he assaulted Angela because she told him she was cheating on him with his brother. At trial, the prosecution introduced James's confession to the assault. Under Rule 106, James proffered his explanation of why he assaulted Angela. The trial court denied the proffer. As a result, the jury was not instructed on James's theory of extreme emotional distress. Did the trial court reversibly err when it denied James's Rule 106 proffer?

Standard of Review: A trial court's "authority to allow evidence . . . 'under Rule 106 is not'" "'discretionary.'" *State v. Cruz-Meza*, 2003 UT 32, ¶10, 76 P.3d 1165.

Preservation: This issue is preserved. R.749:151-54, 161-68; 750:4-8.

Issue II: Whether the evidence was insufficient to support James's conviction for obstructing justice because no reasonable jury could have found beyond a reasonable doubt that James concealed, removed, or destroyed evidence specifically intending to hinder the investigation of Angela's murder.

Standard of Review: "When a defendant challenges a jury verdict for insufficiency of the evidence, '[the court] review[s] the evidence and all inferences which may be reasonably drawn from it in the light most favorable to the verdict.'" *State v. Noor*, 2012 UT App 187, ¶4, 283 P.3d 543 (memorandum decision). The court "will reverse the jury's verdict 'only when the evidence, so viewed, is sufficiently inconclusive or inherently improbable that reasonable minds must have entertained a reasonable doubt that the defendant committed the crime of which he was convicted.'" *Id.*

Preservation: This issue is preserved. R.750:35-38. But to the extent the Court believes it is not, it should review the issue for plain error. *See State v. Mohamed*, 2012

UT App 183, ¶3, 282 P.3d 1066. "When challenging the sufficiency of the evidence under the plain error doctrine, 'a defendant must demonstrate first that the evidence was insufficient to support a conviction of the crime charged and second that the insufficiency was so obvious and fundamental that the trial court erred in submitting the case to the jury.'" *Id.* (quoting *State v. Holgate*, 2000 UT 74, ¶17, 10 P.3d 346).

DETERMINATIVE STATUTES AND RULES

The following are attached at Addendum B: Utah Code §§76-5-203, 76-5-205.5, 76-8-306; Utah R. Evid. 106.

STATEMENT OF THE CASE

The State charged James with murder and obstructing justice. R.1-3. After a jury trial, James was convicted of both charges. R.642, 726-27; 750:110. He timely appeals. R.726-37.

STATEMENT OF FACTS

James and Angela were in a relationship and lived together in an apartment in Salt Lake City. R.748:30; 749:73-74, 94-96. They were in their apartment on the night of May 4, 2011, when Angela repeatedly told James that she was cheating on him with his brother. R.748:45-46, 57, 61-62; 749:80-82, 166-69. Enraged, James began to assault her, asking her to tell him she would end the affair. R.749:166-69. Angela would not accede to James's requests. R.749:166-69. The incident continued into the early morning hours. R.749:90-91. At one point, James brought Angela into the bathroom to place her head under the bathtub faucet to wash blood off of her face and prevent her from losing consciousness. R.749:95-97. Sometime around 8 or 9 a.m., Angela, lying on her back on

the bedroom floor, lost consciousness as James applied pressure to her neck with his forearm. R.749:91-92, 97-99. She never woke up. R.749:91-92, 98-99. James laid down next to her and slept for an hour or two. R.749:92, 98.

After James awoke, he called his friend, Roger Gary Warner (Roger). R.748:91-92; 749:92. He was crying and scared because Angela was not waking up. R.748:91-92; 749:142. He asked Roger to come pick him up. R.748:91-93; 749:92-93. He then called 911 and reported that there was someone at his location who was not breathing. R.748:125-27; 749:92-93. He left the door to the apartment slightly open for the police and left with Roger. R.748:76-77; 749:28. Five minutes after the first 911 call, James placed another 911 call from a pay phone at a nearby convenience store. R.748:100-01, 131-36, 207; R.749:73-74, 117-18. He and Roger then went to Roger's house, where they took a nap in Roger's bed. R.748:102-04. Before James climbed into the bed, Roger told him to take off his pants because they had blood on them. R.748:102. James complied. R.748:102-03.

The police arrived outside Roger's house after identifying James as the primary suspect in Angela's death and tracing his whereabouts. R.748:83, 205-12; 749:3-5, 73-75. They made several attempts to contact the inhabitants. R.749:4-6. After approximately an hour and a half, Roger emerged first. R.749:4-6. James came out approximately an hour and forty minutes later. R.749:6. He was wearing underwear without pants and shoes without socks. R.749:9. He informed the police that he had taken seventeen methadone pills. R.749:77, 119. He was arrested and taken to the hospital, where he received treatment for a methadone overdose. R.749:6, 119-20, 144.

Det. Chad Reyes (Reyes) interviewed James while James was recovering at the hospital. R.749:78-79. The interview was audio-recorded, and the recording was transcribed. R.749:87. In the interview, James confessed to the prolonged assault on Angela. R.749:81-92, 95-99. He explained that he did it because of the emotional distress he experienced after Angela repeatedly told him that she was cheating on him with his brother and refused to say that she would end the affair. R.749:166-68. He admitted that Angela lost consciousness and never regained it after he pressed his forearm into her neck. R.749:91-92, 97-99. He asked Reyes if Angela was "okay," if she had "ma[d]e it." R.749:139. When Reyes answered no, James was "distraught." R.749:141.

At trial, the State introduced a portion of the statement James gave to Reyes at the hospital. R.749:78-99. Specifically, the State introduced James's confession to assaulting Angela. R.749:78-99. The confession was introduced through the testimony of Reyes, though he and the prosecutor explicitly relied on the transcript of the interview in presenting the testimony. R.749:85, 87, 93.

Afterwards, James proffered a different part of his statement to Reyes. R.749:128-33, 166-68. Specifically, he proffered his explanation to Reyes of why he assaulted Angela: she repeatedly told him that she was cheating on him with his brother and she refused to say she would end the affair. R.749:128-33, 166-68. James intended to use this evidence to support his theory of the case: he acted under the influence of extreme emotional distress. R.747:2, 5; 748:42-43; 749:130, 163-64, 171-72; 750:4-5, 13; *see also* Utah Code §76-5-205.5(1)(b) ("Special mitigation exists when the actor causes the death of another . . . under the influence of extreme emotional distress for which there is a

reasonable explanation or excuse."). James offered the evidence on the ground that Angela's statements were not hearsay, and his statement, although hearsay, was admissible under Rules 106 of the Utah Rules of Evidence. R.749:152-54, 161-64. He also argued that excluding the evidence would deprive him of his right to present a defense. R.749:163-64; *see also* R.149:130.

The trial court denied the proffer, ruling that the evidence constituted double hearsay that did not qualify for admission under Rule 106. R.750:4-12. The court reasoned that the proffered part of James's statement was a "self-serving, after-the-fact explanation" for the assault that was "temporally removed" from the inculpatory part introduced by the prosecution. R.750:8. As a result of the ruling, James conceded that the evidence did not support a jury instruction on extreme emotional distress, and no such instruction was given. R.750:13.

At the close of evidence, James moved for a directed verdict on the obstructing justice charge, arguing that the evidence failed to show that James acted with the requisite intent. R.750:35-36. The trial court denied the motion. R.750:38. In closing argument, the prosecution argued that James was guilty of obstructing justice because the evidence showed that he cleaned Angela and the apartment after Angela died but before he left with Roger. R.750:65-66, 72-73, 96. Alternatively, the prosecution argued that James was guilty of obstructing justice because he traveled from the apartment to Roger's house wearing his pants and socks, which had Angela's blood on them. R.750:66-67.

SUMMARY OF ARGUMENT

The trial court erred in denying James's Rule 106 proffer of the part of his statement to Reyes in which he explained why he assaulted Angela: she repeatedly told him that she was cheating on him with his brother. The trial court ruled that the evidence was inadmissible double hearsay on the ground that James's statement and Angela's statement were both offered for the truth of the matter asserted. This ruling was incorrect. Angela's statement was not offered for the truth of the matter asserted. It was offered to explain why James assaulted Angela, regardless of the statement's truth. James's statement, on the other hand, was hearsay. But it was nevertheless admissible under Rule 106 because it was relevant to James's theory of special mitigation based on extreme emotional distress and it was necessary to qualify the part of James statement introduced by the prosecution in which James confessed to the assault that caused Angela's death. The denial of James's Rule 106 proffer was prejudicial because it precluded James from presenting his theory of the case, to wit, he was entitled to special mitigation because he killed Angela under the influence of extreme emotional distress for which there was a reasonable explanation or excuse.

The evidence adduced at trial is insufficient to sustain James's conviction for obstructing justice because there was no evidence that James ever concealed or destroyed evidence specifically intending to hinder the investigation of Angela's murder. Culpability can be implied from the actions and statements of the defendant, but the evidence must be clear enough that the jury does not have to speculate. James's conviction for obstructing justice depended on speculation.

ARGUMENT

I. Under Rule 106, the trial court was required to admit the part of James's statement to Reyes in which he explained why he assaulted Angela because it was necessary to qualify, explain, or place into context the part of the statement in which James confessed to the assault. Excluding the evidence was prejudicial because it precluded James from presenting his theory of the case.

The excluded evidence at issue is James's out-of-court statement to Reyes that he assaulted Angela because she repeatedly told him that she was cheating on him with his brother. R.749:166-68; 750:4-12. The trial court ruled that this evidence constituted inadmissible double hearsay. R.750:6; *see also* Utah R. Evid. 805 ("Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule."). Thus, as a preliminary matter, it is necessary to address whether the court was correct that James's statement and Angela's statement were both hearsay. *See Prosper, Inc. v. Dep't of Workforce Servs.*, 2007 UT App 281, ¶8, 168 P.3d 344 ("The determination of whether evidence constitutes hearsay is a question of law that we review for correctness.").

It was not. Angela's statement was not hearsay. And although James's statement was hearsay, it was admissible hearsay.

"Hearsay is not admissible except as provided by law or by [the Utah Rules of Evidence]." Utah R. Evid. 802. "'Hearsay' means a statement that . . . the declarant does not make while testifying at the current trial or hearing . . . and . . . a party offers in evidence *to prove the truth of the matter asserted in the statement*." Utah R. Evid. 801(c) (emphasis added); *see also State v. McCullar*, 2014 UT App 215, ¶27, 335 P.3d 900

("[O]ut-of-court statements not offered to prove the truth of the matter asserted are by definition not hearsay."). Therefore, the "hearsay rule does not bar" a statement offered "without regard to whether it be true or false." *McCullar*, 2014 UT App 215, ¶27 (internal quotation marks omitted).

Angela's statement is not hearsay because it was not offered for the truth of the matter asserted in it. It was offered to explain James's conduct, not to prove that Angela was cheating on James with his brother. R.749:153-55. In fact, whether Angela was actually cheating on James was irrelevant to James's theory of extreme emotional distress.[1] All that mattered for James's theory is that Angela told James she was cheating on him with his brother—regardless of whether it was true—which caused James extreme emotional distress under the influence of which he committed the assault. *See* Utah Code §76-5-205.5(1)(b); *see also McCullar*, 2014 UT App 215, ¶27 (explaining that a statement offered simply to show that "'the statement was made,'" "'without regard to whether it be true or false,'" is not hearsay) (quoting *State v. Sibert*, 310 P.2d 388, 390-91 (Utah 1957)). Because Angela's statement was not offered to prove the truth of the matter asserted in it, it is not hearsay. *See* Utah R. Evid. 801(c). Hence, the trial court was incorrect that the excluded evidence constituted double hearsay.

On the other hand, James's statement is concededly hearsay. It was offered to prove the truth of the matter asserted in it: that Angela repeatedly told him that she was cheating on him with his brother. But it was nevertheless admissible hearsay under Rule

[1] Notably, the trial court acknowledged this on the first day of trial. R.747:3. This acknowledgement is at odds with the court's ruling on the last day of trial that Angela's statement was offered for the truth of the matter asserted. *See* R.750:6.

106 of the Utah Rules of Evidence. *See infra* Point I.A. And excluding the statement was prejudicial because it deprived James of the ability to present his theory of the case. *See infra* Point I.B.

A. *Under Rule 106, the trial court was required to admit the portion of James's statement to Reyes in which he explained why he assaulted Angela because it was necessary to qualify, explain, or place into context the inculpatory portion of the statement that was introduced by the prosecution.*

The common law rule of completeness "generally provides that a party may introduce the whole of a statement if any part is introduced by the opposing party." *State v. Cruz-Meza*, 2003 UT 32, ¶9, 76 P.3d 1165. Under that rule, when the prosecution presents part of a defendant's out-of-court statement and the "statement contains both disserving and self-serving [parts], the whole must be admitted and considered by the jury" at the defendant's request. *State v. Dunkley*, 39 P.2d 1097, 1109 (Utah 1935), *overruled on other grounds by State v. Crank*, 142 P.2d 178 (Utah 1943); *see also State v. Martin*, 300 P. 1034, 1038 (Utah 1931) (same). Of course, the jury need not give the disserving and self-serving parts equal credit. *Dunkley*, 39 P.2d at 1109; *Martin*, 300 P. at 1038.

The common law rule of completeness is partially codified in Rule 106 of the Utah Rules of Evidence. Utah R. Evid. 106; *Cruz-Meza*, 2003 UT 32, ¶9; *State v. Leleae*, 1999 UT App 368, ¶43, 993 P.2d 232. Rule 106 provides:

> If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part—or any other writing or recorded statement—that in fairness ought to be considered at the same time.

Utah R. Evid. 106. It requires the admission of "those portions of a statement relevant and necessary to qualify, explain, or place into context the portion already introduced." *Leleae*, 1999 UT App 368, ¶43 (internal quotation marks omitted); *see also Cruz-Meza*, 2003 UT 32, ¶14 (same). Under Rule 106, "the exculpatory portion of a defendant's statement should be admitted if it is relevant to an issue in the case and necessary to clarify or explain the portion received." *United States v. Baker*, 432 F.3d 1189, 1223 (11th Cir. 2005) (interpreting Fed. R. Evid. 106); *see also* Utah R. Evid. 106 advisory committee's note ("This rule is the federal rule, verbatim.").

As our supreme court has explained, Rule 106 "merely requires that the material sought to be admitted 'ought in fairness' to be admitted with the portion already introduced." *Cruz-Meza*, 2003 UT 32, ¶14. Moreover, a trial court's "authority to allow evidence . . . 'under Rule 106 is not'" discretionary. *Cruz-Meza*, 2003 UT 32, ¶10; *see also id.* ¶¶9-15 (explaining that the doctrine of oral completeness contained in Rule 611 affords trial courts discretion while Rule 106 does not).

In *Leleae*, the prosecution presented inculpatory parts of an out-of-court statement that the defendant, Leleae, gave to a detective. *Leleae*, 1999 UT App 368, ¶¶38-41. The statement was recorded and transcribed, but the prosecution introduced the inculpatory parts through the detective's testimony. *Id.* ¶¶38, 41. Leleae moved to admit the entire statement, which also contained exculpatory parts, under Rule 106. *Id.* ¶¶43-44. The trial court denied Leleae's motion. *Id.* ¶¶38-41 & ¶40 n.4. It ruled that Rule 106 did not apply. *Id.* ¶40 n.4. In the alternative, the court decided to exclude the statement even if Rule 106

applied on the ground that the statement was self-serving. *Id.* ¶40 n.4. Leleae was convicted of aggravated assault. *Id.* ¶1.

On appeal, this Court held that Rule 106 applied because Leleae's statement "was tape recorded and then transcribed from that recording." *Id.* ¶44. But the Court further held that the trial court did not err in denying Leleae's request to admit the entire statement because Leleae presented the exculpatory parts of the statement during cross-examination of the detective and "other testimony supported his version of the events." *Id.* ¶¶45-46. Thus, Leleae was able to introduce the parts of his statement that were "'necessary to qualify, explain, or place into context'" the parts presented by the prosecution. *Id.* ¶¶43, 45-46. Accordingly, the Court concluded that admitting Leleae's entire statement was not "'necessary to qualify, explain, or place into context'" the parts of it presented by the prosecution. *Id.* ¶43.

Leleae is the only Utah appellate opinion applying Rule 106,[2] but cases from other jurisdictions are instructive. *Cox v. United States*, 898 A.2d 376 (D.C. 2006), is one example. There, the defendant, Cox, was charged with several possession crimes, including unlawful firearm possession and carrying a pistol without a license. *Id.* at 378. The prosecutor elicited testimony from the arresting officer that Cox never said he had a license for the firearm. *Id.* at 379. Invoking the federal counterpart to Rule 106, the defendant proffered part of Cox's out-of-court statement to the officer that explained why he was in possession of the firearm: "he had gone to the firing range the night before and

[2] However, *State v. Cruz-Meza* interprets Rule 106 in some depth. 2003 UT 32, ¶¶9-15, 76 P.3d 1165.

had forgotten about the gun after putting it in the car." *Id.* at 379-81. The trial court denied the proffer, and Cox was convicted. *Id.* at 378-80. On appeal, the court held that the trial court abused its discretion because the evidence proffered was relevant to Cox's defense and it was necessary to qualify the officer's testimony that Cox never said he had a license for the firearm. *Id.* at 381-82. However, the court found that the error was harmless, in large part because Cox himself testified to the proffered statement. *Id.* at 382-83.

Another example is *State v. Cabrera-Pena*, 605 S.E.2d 522 (S.C. 2004). There, the defendant, Cabrera-Pena, was charged with murder in the shooting death of his estranged wife. *Id.* at 523-24. At trial, the State introduced out-of-court inculpatory statements Cabrera-Pena made to police. *Id.* at 523-25. Cabrera-Pena then proffered a written statement he made to police indicating that he did not intend to shoot the victim. *Id.* at 523. The trial court denied the proffer, and Cabrera-Pena was convicted. *Id.* at 523-24. On certiorari, the South Carolina Supreme Court held that the trial court erred because the proffered statement "tend[ed] to explain or qualify" the inculpatory statements introduced by the prosecution. *Id.* at 523-26; *see also Long v. State*, 610 So.2d 1276, 1278-81 (Fla. 1992) (holding that the trial court committed reversible error by admitting portions of defendant's television interview in which he admitted to uncharged crimes and precluding defendant from introducing other portions of interview).

Here, the trial court correctly concluded that Rule 106 applies because James's statement to Reyes was recorded and then transcribed. R.750:7; *Leleae*, 1999 UT App 368, ¶44. But, as in *Cox* and *Cabrera-Pena*, the trial court erred by prohibiting James

from introducing the exculpatory (or mitigating) parts of his statement to Reyes. In the part of the statement that James sought to introduce, he explained to Reyes why he assaulted Angela: she repeatedly told him that she was cheating on him with his brother. R.749:166-68. So, the part James sought to introduce was "'relevant'" to his theory of extreme emotional distress and it was "'necessary to qualify, explain, or place into context'" the inculpatory parts introduced by the prosecution. *Leleae*, 1999 UT App 368, ¶43.

Thus, this case is unlike *Leleae*. There, the defendant was able to introduce the parts of his statement that were "'relevant and necessary to qualify, explain, and place into context'" the parts introduced by the prosecution. *Id.* ¶¶43, 45-46. He was also able to present other evidence supporting his theory of the case. *Id.* ¶¶45-46. So, in *Leleae*, admitting the defendant's proffered evidence—his entire statement—was unnecessary. *Id.* ¶¶43, 45-46. Here, however, James did not seek to introduce his entire statement, but only selected parts that were "'relevant'" to his theory of the case and "'necessary to qualify, explain, or place into context'" the parts introduced by the prosecution. *Id.* ¶43. Moreover, James was unable to present any other evidence supporting his theory of the case.[3] To put it succinctly, the difference between this case and *Leleae* is that the

[3] Although not a relevant consideration under Rule 106, it is perhaps notable that James would not have been able to testify to Angela's statement even if he had taken the stand because the trial court ruled that her statement was inadmissible hearsay. R.750:6; *see also United States v. Walker*, 652 F.2d 708, 713-14 (7th Cir. 1981) (holding that a trial court cannot deny a defendant's proffer under the federal counterpart to Rule 106 on the basis that the defendant decided not to testify); *State v. Cabrera-Pena*, 605 S.E.2d 522, 524-25 (S.C. 2004) (holding that a trial court cannot deny a defendant's proffer under South Carolina's counterpart to Rule 106 on the basis that the defendant decided not to

proffered evidence here was "'necessary,'" whereas the proffered evidence in *Leleae* was not. *Id.*

The trial court gave two reasons for denying James's proffer: (1) the part of his statement he sought to introduce was "self-serving" and (2) it was "temporally removed" from the parts introduced by the prosecution. R.750:8. Neither of these reasons is valid for excluding evidence offered under Rule 106.

A trial court may not exclude a statement offered under Rule 106 on the basis that it is self-serving, for three related reasons. First, Rule 106 is a partial codification of the common law rule of completeness, *Cruz-Meza*, 2003 UT 32, ¶9, which expressly allowed a defendant to introduce relevant "self-serving" parts of his out-of-court statement when the prosecution introduced "disserving" parts of the statement against him. *Dunkley*, 39 P.2d at 1109; *Martin*, 300 P. at 1038. Second, the self-servingness of a statement is relevant only to its "trustworthiness, [which is] a consideration absent from [R]ule 106." *Cruz-Meza*, 2003 UT 32, ¶14. It is for the jury, not the court, to evaluate the trustworthiness of a statement under Rule 106. *See Dunkley*, 39 P.2d at 1109; *Martin*, 300 P. at 1038. Third, a central purpose of Rule 106 is to allow parties to introduce self-serving statements that qualify, explain, or put into context disserving statements introduced against them under the opposing party-declarant rule. *See* Utah R. Evid. 801(d)(2); *see also Baker*, 432 F.3d at 1223 ("[T]he exculpatory portion of

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testify). Thus, even if James had testified, and even if he had been able to testify to his belief that Angela was cheating on him with his brother, he still would have been unable to testify to Angela's statement, and therefore he would have been unable to present evidence that he acted "under the influence of extreme emotional distress *for which there is a reasonable explanation or excuse*." Utah Code §76-5-205.5(1)(b) (emphasis added).

a defendant's statement should be admitted if it is relevant to an issue in the case and necessary to clarify or explain the portion received."). Indeed, it is difficult to think of many other scenarios in which Rule 106 would be useful. Accordingly, Rule 106 would be significantly undermined if statements offered pursuant to it could be excluded because they are self-serving.

The fact that the part of a statement proffered under Rule 106 is "temporally removed" from the part already introduced is also not a valid basis for denying the proffer. *See* R.750:8. Rule 106 states:

> If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of *any other part*—or any other writing or recorded statement—that *in fairness* ought to be considered at the same time.

Utah R. Evid. 106 (emphases added). The emphasized language demonstrates that the touchstone of Rule 106 is fairness without regard to the temporal proximity of the pertinent parts of the statement. As our supreme court has explained, the "'fairness' standard" requires the admission of any other portion that is "'relevant and necessary to qualify, explain, or place into context the portion already introduced.'" *Cruz-Meza*, 2003 UT 32, ¶14 (quoting *Leleae*, 1999 UT App 368, ¶43). Thus, the question under Rule 106 concerns only the substantive relationship, not the temporal relationship, between the proffered and already-received parts of the statement. *See id.*; *Leleae*, 1999 UT App 368, ¶43. Indeed, it is impossible to see how temporal proximity factors into Rule 106 when the rule also requires "the introduction . . . of *any other writing or recorded statement*" if fairness demands it. Utah R. Evid. 106 (emphasis added). Additionally, *Cruz-Meza*

further clarifies that while "temporal[] remote[ness]" may be a proper consideration under the doctrine of oral completeness contained in Rule 611, it is not under Rule 106. *Cruz-Meza*, 2003 UT 32, ¶¶9-14.

In sum, the trial court erred in excluding the part of James's statement to Reyes in which James explained why he committed the assault that caused Angela's death. That part of James's statement was relevant to his theory of extreme emotional distress and it was necessary to explain, qualify, and put into context the inculpatory parts of the statement that the prosecution introduced.

B. *The trial court's erroneous denial of James's Rule 106 proffer was prejudicial because it precluded James from presenting his theory of the case.*

The trial court's erroneous evidentiary ruling prejudiced James. "An erroneous decision to exclude evidence constitutes reversible error only if the error is harmful." *State v. McCullar*, 2014 UT App 215, ¶53, 335 P.3d 900. "And 'an error is harmful if it is reasonably likely that the error affected the outcome of the proceedings.'" *Id.* (alteration omitted). However, the error here deprived James of his due process right to present a complete defense. *See Holmes v. S. Carolina*, 547 U.S. 319, 324 (2006); *McCullar*, 2014 UT App 215, ¶¶53-59. Because the error "'result[ed] in the deprivation of a constitutional right, [this Court] [should] apply a higher standard of scrutiny, reversing the conviction unless [it] find[s] the error harmless beyond a reasonable doubt.'" *State v. Crowley*, 2014 UT App 33, ¶17, 320 P.3d 677. Regardless, the error prejudiced James under either standard.

Trial errors that preclude a defendant from presenting his theory of the case are prejudicial. *See State v. Hansen*, 734 P.2d 421, 428 (Utah 1986); *Watters v. Querry*, 626 P.2d 455, 458 (Utah 1981); *Webb v. Snow*, 132 P.2d 114, 120-21 (Utah 1942); *McCullar*, 2014 UT App 215, ¶¶53-59; *see also State v. Spillers*, 2007 UT 13, ¶24, 152 P.3d 315 ("'[W]hen an element of the crime is in dispute, and the evidence is consistent with both the defendant's and the State's theory of the case, failing to instruct on the lesser included offense presumptively affects the outcome of the trial and our confidence in the verdict is undermined.'" (alteration omitted)); *United States v. Escobar de Bright*, 742 F.2d 1196, 1201-02 (9th Cir. 1984) ("The right to have the jury instructed as to the defendant's theory of the case is one of those rights 'so basic to a fair trial' that failure to instruct where there is evidence to support the instruction can never be considered harmless error."). For example, "[w]here there is evidence adduced to support a party's theory of the case, it is prejudical [sic] error for the trial court to fail to instruct thereon." *Watters*, 626 P.2d at 458. And, as this Court recently held in *McCullar*, erroneous evidentiary rulings are prejudicial when they deprive a defendant of the ability to present his theory of the case to the jury. *McCullar*, 2014 UT App 215, ¶¶53-59.

When a trial court's erroneous ruling completely precludes a defendant from presenting his theory of the case, the jury has no opportunity to find the facts pertaining to the theory, and an appellate court may not sit as a finder of fact. *See* Utah Code §§77-17-10(1) ("In a jury trial, questions of law are to be determined by the court, questions of fact by the jury."), 78B-5-102 ("All questions of fact, where the trial is by jury, . . . are to be decided by the jury, and all evidence is to be addressed to them . . . ."); *State v.*

Hamilton, 2003 UT 22, ¶38, 70 P.3d 111 ("We do not weigh conflicting evidence, nor do we substitute our judgment for that of the fact-finder[.]" (internal quotation marks, citations, and alterations omitted)); *State v. Boyd*, 2001 UT 30, ¶16, 25 P.3d 985 ("It is the exclusive function of the jury to weigh the evidence and to determine the credibility of the witnesses." (internal quotation marks and emphases omitted)); *State v. Rowley*, 2008 UT App 233, ¶16, 189 P.3d 109 ("It is within the province of the jury to weigh the evidence, to decide what weight to give any conflicting evidence, and to make credibility determinations; we will not substitute our impressions for the jury's findings on those matters."). Therefore, in such circumstances, a new trial is required.

Such circumstances exist here. The trial court's erroneous evidentiary ruling completely precluded James from presenting his theory of the case: he was entitled to special mitigation because he assaulted Angela under extreme emotional distress caused by her repeatedly telling him that she was cheating on him with his brother.[4] *See* Utah Code §76-5-205.5(1)(b). If the trial court had admitted the proffered evidence as it should have, James would have been entitled to a jury instruction on special mitigation due to extreme emotional distress. *Cf. State v. Shumway*, 2002 UT 124, ¶¶9-13, 63 P.3d 94; *see also State v. Campos*, 2013 UT App 213, ¶29, 309 P.3d 1160 ("Each party is entitled to have the jury instructed on the law applicable to its theory of the case if there is any reasonable basis in the evidence to justify it. Thus, if a rational jury could find a factual basis in the evidence to support the theory, the trial court is obligated to give the instruction." (internal quotation marks, citation, and alterations omitted)). Furthermore,

[4] *See supra* n.3.

the jury may well have found special mitigation by a preponderance of the evidence, thereby reducing James's conviction from murder to manslaughter. *See* Utah Code §76-5-205.5(5). Indeed, the evidence was consistent with James's theory that he acted "under the influence of extreme emotional distress for which there [was] a reasonable explanation or excuse." Utah Code §76-5-205.5(1)(b). However, as a result of the trial court's erroneous ruling, there was no evidence to support James's theory, and the jury was not instructed on it. Therefore, trial court's error was prejudicial, and a new trial is required.

II. The evidence was insufficient to support James's conviction for obstructing justice because no reasonable jury could have found beyond a reasonable doubt that James concealed, removed, or destroyed evidence specifically intending to hinder the investigation of Angela's murder.

This Court will reverse a jury conviction for insufficient evidence when, viewing "the evidence and all inferences which may reasonably be drawn from it in the light most favorable to the verdict," "the evidence is sufficiently inconclusive or inherently improbable that reasonable minds must have entertained a reasonable doubt that the defendant committed the crime." *State v. Shumway*, 2002 UT 124, ¶15, 63 P.3d 94. "A guilty verdict is not legally valid if it is based solely on inferences that give rise to only remote or speculative possibilities of guilt." *Id.* ¶18 (internal quotation marks and alterations omitted). The Court "cannot take a speculative leap across a remaining [evidentiary] gap in order to sustain a verdict." *Id.* "Every element of the crime charged must be proven beyond a reasonable doubt." *State v. Harman*, 767 P.2d 567, 568 (Utah Ct. App. 1989). "If the evidence does not support those elements, the verdict must fail."

Id. Thus, a verdict fails for insufficient evidence if "the facts shown are reasonably reconcilable with other [innocent] possibilities," *State v. Bingham*, 575 P.2d 197, 199 (Utah 1978), or if "reasonable explanations [for the evidence] exist" that are consistent with innocence. *Shumway*, 2002 UT 124, ¶18. "Culpability can be implied from the actions and statements of the defendant, but the evidence must be clear enough that the jury does not have to guess." *Harman*, 767 P.2d at 569.

"An actor commits obstruction of justice if the actor, with intent to hinder, delay, or prevent the investigation, apprehension, prosecution, conviction, or punishment of any person regarding conduct that constitutes a criminal offense . . . alters, destroys, conceals, or removes any item or other thing." Utah Code §76-8-306(1)(c); *cf.* R.668. Obstructing justice "is a crime of specific intent." *State v. Maughan*, 2013 UT 37, ¶13, 305 P.3d 1058.

In *State v. Workman*, 806 P.2d 1198 (Utah Ct. App. 1991), this Court held that there was insufficient evidence to convict the defendant of obstructing justice for allegedly concealing evidence that her long-term houseguest was sexually abusing her young daughter. *Id.* at 1204-05, *aff'd*, 852 P.2d 981, 987. There, the defendant knew that, among other things, the guest gave bras and a revealing gymnastics suit to the daughter, made long-distance phone calls to the daughter when he was away, and was accused of inappropriately touching the daughter at a pool. *Workman*, 806 P.2d at 1199-1201, 1204. The guest had also told the defendant that he wanted to marry the daughter. *Id.* at 1200, 1204. The State argued that these facts gave rise to an inference that the defendant knew of the abuse. *Id.* at 1204. It further claimed that the defendant was motivated to conceal the evidence because she shared a joint account with the guest into which the guest

deposited hundreds of dollars. *Id.* The Court disagreed, holding the evidence failed to show that the defendant "was aware" the guest "was sexually exploiting" the daughter "and that . . . she helped him conceal the crime." *Id.* at 1205. It also concluded that "it [was] inherently improbable that, even if [the defendant] were aware of the abuse, the joint bank account would have motivated [her] to conceal [the guest's] abuse of her daughter." *Id.* It noted the undisputed evidence that the defendant reprimanded the guest whenever she believed he was acting inappropriately with the daughter and cooperated with the police once they informed her that the guest was under investigation. *Id.* at 1204-05.

Workman appears to be the only Utah case finding the evidence insufficient to support a conviction for obstructing justice. *But see Bingham*, 575 P.2d at 199 (holding that the evidence was insufficient to convict defendant of second degree felony obstructing justice, but sufficient to convict defendant of class B misdemeanor obstructing justice). However, there are at least three Utah cases finding the evidence insufficient to support evidence tampering, a crime very similar to the variation of obstructing justice charged in this case and with a similar specific intent. *See Shumway*, 2002 UT 124, ¶¶15-18; *State v. Gonzales*, 2000 UT App 136, ¶¶11-20, 2 P.3d 954; *State v. Harman*, 767 P.2d 567, 569 (Utah Ct. App. 1989). These cases are instructive.

In *Shumway*, the defendant, Shumway, stabbed the victim thirty-nine times. *Shumway*, 2002 UT 124, ¶2. The police found a knife that they believed was used in the stabbing, but the medical examiner determined that some of the victim's wounds were caused by a second implement, which was never found. *Id.* In addition to a murder

charge, the State charged Shumway with evidence tampering for allegedly concealing the second implement. *Id.* ¶¶2-3, 15. He was convicted. *Id.* ¶3.

On appeal to the Utah Supreme Court, Shumway claimed that the evidence was insufficient to support his conviction for evidence tampering. *Id.* ¶15. In response, the State argued that there were three key pieces of evidence supporting the conviction: (1) there was approximately an hour of unaccounted for time in which Shumway could have disposed of the second implement; (2) Shumway had moved some other items, specifically blankets and socks, that had blood on them as a result of the stabbing; and (3) several months after the stabbing, Shumway wrote in a journal entry, "'Do they know what kind of knife is the other.'" *Id.* ¶17. The court was unpersuaded by the State's argument. *Id.* ¶18. It stated: "At most, the evidence supports only the proposition that [Shumway] had the *opportunity* to destroy or conceal the second implement, if indeed it ever existed. . . . Other reasonable explanations exist why the instrument was not found. . . . Only speculation supports the conviction." *Id.* Holding that the evidence was insufficient, the court reversed Shumway's conviction and dismissed the charge. *Id.* ¶19.

In *Gonzales*, the defendant, Gonzales, was riding in the backseat of a car from which the driver fired shots at another automobile. *Gonzales*, 2000 UT App 136, ¶3. After seeing police while stopped at a traffic light, the driver tossed the gun into the glove compartment. *Id.* ¶4. But when police pulled the car over based on a report of the shooting, they found the gun behind the glove compartment. *Id.* ¶¶5-6. They also found marijuana underneath the backseat and an extra ammunition clip for the gun in Gonzales's pocket. *Id.* ¶6. Gonzales admitted that the marijuana was his. *Id.* The State

charged Gonzales with evidence tampering, alleging that he hid the marijuana or encouraged or aided the driver in hiding the gun. *Id.* ¶¶7-9. Gonzales was convicted. *Id.* ¶9.

On appeal to this Court, Gonzales challenged the sufficiency of the evidence supporting his conviction. *Id.* ¶10. As a preliminary matter, the Court held that the applicable evidence tampering statute required Gonzales to have concealed the evidence believing that an investigation was pending or imminent. *Id.* ¶15. Regarding the gun, the State argued that the clip in Gonzales's pocket "tied" him to the gun, so he must have encouraged the driver to hide the gun. *Id.* ¶17. The Court quickly disposed of this argument, noting simply that "the State presented no evidence to support this inference." *Id.* Alternatively, the State argued that Gonzales "took the extra clip to disperse evidence and thus assisted in misdirecting the police." *Id.* ¶18. The Court stated, "it is just as possible, absent any evidence presented by the State, that [Gonzales] had the clip in his pocket" prior to the shooting. *Id.* The Court concluded, "by merely establishing [Gonzales]'s possession of the extra clip, the State did not present sufficient evidence from which the jury could infer timing, concealment, and intent to conceal the gun beyond a reasonable doubt." *Id.*

Regarding the marijuana, the State argued that Gonzales's admission to owning the marijuana and the fact that "it was found under the back seat" gave rise to a reasonable inference that Gonzales concealed the marijuana believing an investigation was imminent. *Id.* ¶19. The Court was unpersuaded. *Id.* ¶20. At trial, Gonzales argued that he put the marijuana under the seat before the shooting. *Id.* Because the State failed

to produce any evidence that Gonzales put the marijuana under the seat after the shooting, the Court held that the evidence failed to establish that Gonzales "hid the marijuana believing an investigation was going to occur and in order to impede the investigation." *Id.* Accordingly, the Court reversed. *Id.* ¶21.

Finally, in *Harman*, the defendant, Harman, was chief of the investigations division of a county attorney's office. *Harman*, 767 P.2d at 567. He was tasked with investigating the origin of a fire that damaged a mall. *Id.* The county's mental health offices were located in the mall. *Id.* Harman enlisted Ralph Tolman and Jim Ashby to separately investigate the fire and prepare reports. *Id.* at 567-68. Dean Larsen, the assistant chief of a local fire department, also investigated the fire. *Id.* at 567. Larsen and Tolman both concluded that the fire originated inside the mental health offices, while Ashby concluded it did not. *Id.* at 567-68. Harman, however, rejected Tolman's report after sending a copy of it to the "supervisor of the county attorney's civil division, and possibly several others." *Id.* at 568. After "Larsen disclosed the existence of [Tolman's] report during a deposition conducted pursuant to a civil suit over [the county's] liability for the fire," Harman was charged with attempted evidence tampering for rejecting the report. *Id.*

At trial, the prosecution relied on evidence of Harman's out-of-court statement that "the report would make the county look bad, cost the county millions, and make the county liable." *Id.* at 569. Harman, on the other hand, testified that he rejected the report because it "'parroted'" Larsen's opinion, "contained unsupported factual assertions, and was a 'bad report.'" *Id.* Harman was convicted. *Id.* at 567.

On appeal, this Court ruled that the evidence was insufficient to convict Harman. *Id.* at 569. It noted that Harman made no attempt to conceal or destroy copies of the report that he had given to other people. *Id.* It concluded that the State failed to present any evidence that Harman rejected the report for improper reasons and not simply because it was a bad report. *Id.* The Court said, "[c]ulpability can be implied from the actions and statements of the defendant, but the evidence must be clear enough that the jury does not have to guess." *Id.* It held that the evidence of Harman's guilt "was so slight, so conflicting, and so inherently improbable that reasonable minds could not have" found him guilty. *Id.*

The relevant evidence supporting James's obstructing justice conviction, in the light most favorable to the verdict, is the following.[5]

1. When Reyes asked James "if he attempted to clean it up at all," James said that, before Angela lost consciousness for the last time, he tried to clean her with hydrogen peroxide and water in the bathtub in order to awaken her and render her first aid. R.749:95-96, 122-24, 144.

2. On a dresser in the bedroom where Angela's body was found, police found an empty hydrogen peroxide bottle with no cap. R.749:19-20; State's Ex. 51. Det. Todd Park testified that the hydrogen peroxide bottle was "larger . . . than what I'd normally have at my house." R.749:20. *But see* State's Ex. 51 (depicting a fairly standard hydrogen peroxide bottle). He also testified that hydrogen peroxide is for cleaning wounds. R.749:30.

3. On the bedroom floor where Angela's body was found, police found an empty spray bottle that had contained an antiseptic solution for disinfecting wounds, some empty water bottles, an empty pink washbasin that had some blood smears inside of it, open gauze packaging, and some used gauze, wet with blood and water, near Angela's body. R.749:18, 20-22, 28; State's Exs. 52-53, 55-57.

[5] *See* Utah R. App. P. 24 (a)(9); *State v. Nielsen*, 2014 UT 10, ¶¶40-44, 326 P.3d 645.

4. In the bedroom, there was some blood that appeared to be diluted on the walls and on a lightswitch. R.749:24, 26; State's Exs. 60-61, 63. A hamper in the bedroom contained a bunch of towels and clothing that was wet with blood and water. R.749:17, 19; State's Ex. 50. There was a white towel with blood on it on the floor. R.749:21; State's Ex. 55. There were bloodstains throughout the bedroom and bathroom. R.749:17-24, 39; State's Exs. 7A, 50-68B, 75.

5. Blood had been washed down the drain of the bathtub and the bathroom sink. R.749:33-38; State's Exs. 66A-67B. There were traces of blood on the bathroom floor. R.749:33-37; State's Exs. 68A-68B.

6. After Angela lost consciousness for the last time, James laid down next to her and slept for an hour or two. R.749:92, 98. Soon after he woke up, he called Roger to come pick him up. R.748:91-93; 749:92-93. It took Roger approximately twenty-five minutes to arrive. R.748:94. Roger waited for James for approximately five to ten minutes. R.748:94-95. Before James left with Roger, he called the police. R.748:125-27; 749:92-93. He left the door open for them on his way out of the apartment. R.748:76-77; 749:28.

7. When Roger and James got to Roger's house, James said he needed a nap. R.748:102. Roger told him to take his pants off because they had blood on them. R.748:102. James took his pants off and he and Roger took a nap in Roger's bed. R.748:102-03.

8. When James emerged from Roger's house to turn himself in to the police, he was not wearing pants or socks. R.749:9. The police found James's pants and socks in plain view in Roger's bedroom. R.749:7-8; State's Exs. 41-45. They had blood on them. R.749:7-8; State's Exs. 41-45. James's wallet containing his social security card was in a pocket of the pants. R.749:8; State's Exs. 43-44.

The jury was instructed to find James guilty of obstructing justice only if he "altered, destroyed, concealed, or removed any item or other thing . . . with intent to hinder, delay or prevent the investigation, apprehension, prosecution, conviction, or punishment of any person regarding conduct that constitutes a criminal offense . . . AND . . . the defendant's conduct constituted the criminal offense of murder." R.668; *cf.* Utah Code §76-8-306(1)(c). Thus, James could be convicted of obstructing justice only if he concealed, removed, or destroyed evidence specifically intending to hinder the

investigation of Angela's murder. *See State v. Steed*, 2014 UT 16, ¶52-55, 325 P.3d 87 (holding that a challenge to the sufficiency of the evidence must be evaluated in light of the applicable statute "as the statute was presented in the jury instructions"). From the evidence, the jury could not have reasonably concluded that James did so.

There was no evidence that James planned to kill Angela. All the evidence was to the contrary.[6] In fact, James was uncertain that Angela was dead until Reyes told him that she was. R.748:97; 749:139, 141. Therefore, James's obstructing justice conviction cannot be based on conduct that occurred before Angela died. In this case, as in *Gonzales*, timing was critical: the prosecution needed to prove that James concealed evidence with the requisite specific intent *after* Angela died.[7] It failed.

The prosecution presented no evidence that James cleaned Angela or the apartment after she died. It produced no evidence of when the supposedly diluted blood smears formed on the wall, when the pile of towels and clothes wet with blood and water was created, when the hydrogen peroxide bottle and antiseptic spray bottle were emptied, or when blood was washed down the drain in the bathtub and bathroom sink. Moreover, the prosecution's allegation that James intended to hinder the investigation was belied by the fact that bloodstains pervaded the crime scene and James himself called the police and left the door open for them. *Cf. Harman*, 767 P.2d at 569 (finding the evidence insufficient in part because Harman did not attempt to conceal or destroy copies of the

[6] The prosecution acknowledged this. R.750:98.

[7] The prosecution implicitly acknowledged this by arguing that James was guilty of obstructing justice because he cleaned Angela and the apartment after Angela died but before he left with Roger. R.750:65-66, 72-73, 96.

report he gave to other people). The evidence, even viewed in a light most favorable to the verdict, was consistent with James's explanation that he cleaned Angela before she died to prevent her from losing consciousness and render her first aid. *Cf. id.*; *Gonzales*, 2000 UT App 136, ¶20; *Workman*, 806 P.2d at 1204-05. In arguing its case, the prosecution simply encouraged the jury to disbelieve James's explanation and to speculate that James tried to clean the crime scene sometime after Angela died but before he left with Roger. R.750:65-66, 72-73, 96; *cf. Shumway*, 2002 UT 124, ¶¶17-18 (holding that the evidence was insufficient because at best it supported the inference that Shumway had "the *opportunity*" to dispose of the second implement, not that he did so); *Gonzales*, 2000 UT App 136, ¶20 (holding that the evidence was insufficient because Gonzales testified that he put the marijuana under the seat before the shooting and the State did not produce any evidence to the contrary); *Harman*, 767 P.2d at 569 (holding that the evidence was insufficient because it was consistent with Harman's explanation that he rejected the report because it was a bad report). Therefore, the evidence purporting to show that James cleaned Angela or the apartment cannot sustain his conviction.

Even if one could reasonably infer that James at some point planned to ultimately kill Angela, the evidence purporting to show that James cleaned Angela and the apartment before she died is insufficient to show that he concealed evidence specifically intending to hinder the investigation of her murder. James explained to Reyes that he cleaned Angela to prevent her from losing consciousness and render her first aid, and the prosecution presented no evidence to the contrary. *Cf. Gonzales*, 2000 UT App 136, ¶20;

Harman, 767 P.2d at 569. Nor did the prosecution present any evidence of how the supposedly diluted blood stains formed on the wall, under what circumstances the pile of towels and clothes wet with blood and water was created, under what circumstances the hydrogen peroxide bottle and antiseptic spray bottle were emptied, or under what circumstances blood was washed down the drain in the bathtub and bathroom sink. It would be speculative to conclude that James concealed or destroyed evidence specifically intending to hinder the investigation of Angela's murder before Angela died. *See Harman*, 767 P.2d at 569 ("Culpability can be implied from the actions and statements of the defendant, but the evidence must be clear enough that the jury does not have to guess."). Thus, even if conduct occurring before Angela's death theoretically could sustain the verdict, on this record it fails to do so.

Nor can James's conviction be sustained by the fact that he left his pants and socks inside Roger's bedroom when he turned himself in.[8] There was no evidence that James concealed his pants and socks with the specific intent to hinder the investigation. Furthermore, the evidence supports the conclusion that James did not intend to hinder the investigation. Roger told James to take his pants off before getting into bed to take a nap because they had blood on them, and James obeyed. In all probability, he removed his socks as well, since they had blood on them, too. When James turned himself in to the police, he left his pants and socks in plain view in Roger's bedroom; he did not conceal them. The pants and socks still had blood on them. When the police searched Roger's house after James turned himself in, they easily found the pants and socks. R.749:7-8;

[8] Notably, the prosecution never argued that it could.

State's Exs. 41-45. The pants were on a chair and the socks were on the floor next to the chair. R.749:7-8; State's Exs. 41-45. A pocket in the pants contained James's wallet, which had his social security card in it. And shortly after James turned himself in, he confessed to the assault that caused Angela's death. All of this evidence weighs heavily against the proposition that James concealed his pants and socks in Roger's bedroom specifically intending to hinder the investigation into Angela's murder.

The prosecutor suggested that the jury could find James guilty of obstructing justice because he wore the bloody pants and socks when he traveled from the apartment to Roger's house. R.750:66-67. This suggestion is absurd. The evidence indicates that James was wearing the pants and socks during the assault. One cannot reasonably infer specific intent to hinder the investigation from the mere fact that James did not change clothes when he left the apartment. On the contrary, if James really wanted to hinder the investigation, he would have changed into clean pants and socks. That would have made it somewhat more difficult for the police to tie him to Angela's death. In short, the prosecution presented no evidence that James wore the pants and socks with a specific intent to hinder the investigation. That's because James only wore them for the usual purpose: to cover his legs and feet.

In sum, there was no evidence that James ever concealed or destroyed evidence specifically intending to hinder the investigation of Angela's murder. Even viewed in a light most favorable to the verdict, the evidence was "sufficiently inconclusive [and] inherently improbable that reasonable minds must have entertained a reasonable doubt that [James] committed [obstruction of justice]." *Shumway*, 2002 UT 124, ¶15. The

evidence was not "clear enough that the jury [did] not have to guess" about James's culpability. *Harman*, 767 P.2d at 569. It failed to eliminate reasonable possibilities consistent with innocence. *See Shumway*, 2002 UT 124, ¶18; *Bingham*, 575 P.2d at 199; *Gonzales*, 2000 UT App 136, ¶18. Instead, the prosecution exhorted the jury to "take a speculative leap across . . . gap[s]" in the evidence, and the jury obliged. *Shumway*, 2002 UT 124, ¶18.

This issue is preserved. R.750:35-38. But to the extent the Court believes it is not, it should review the issue for plain error. *See State v. Mohamed*, 2012 UT App 183, ¶3, 282 P.3d 1066. "When challenging the sufficiency of the evidence under the plain error doctrine, 'a defendant must demonstrate first that the evidence was insufficient to support a conviction of the crime charged and second that the insufficiency was so obvious and fundamental that the trial court erred in submitted the case to the jury.'" *Id.* (quoting *State v. Holgate*, 2000 UT 74, ¶17, 10 P.3d 346).

For reasons already mentioned, the evidence was insufficient to support James's obstructing justice conviction. The prosecution presented "*no* evidence" that James concealed, removed, or destroyed evidence specifically intending to hinder the investigation into Angela's murder. *Holgate*, 2000 UT 74, ¶17. Therefore, the insufficiency of the evidence was so obvious and fundamental that the trial court erred in submitting the obstructing justice charge to the jury. *Id.*

CONCLUSION

For the foregoing reasons, James asks the Court to reverse his conviction for murder and remand for a new trial on that charge. He further asks the Court to reverse his conviction for obstructing justice and dismiss that charge for insufficient evidence.

SUBMITTED this 29 day of January, 2015.

JOHN B. PLIMPTON
Attorney for Defendant/Appellant

CERTIFICATE OF DELIVERY

I, JOHN B. PLIMPTON, hereby certify that I have caused to be hand-delivered an original and 7 copies of the foregoing to the Utah Court of Appeals, 450 South State Street, 5th Floor, Salt Lake City, Utah 84114; and 3 copies to the Attorney General's Office, Heber M. Wells Building, 160 East 300 South, 6th Floor, Salt Lake City, Utah 84114, this 29 day of January, 2015.

JOHN B. PLIMPTON

CERTIFICATE OF COMPLIANCE

In compliance with the type-volume limitation of Utah R. App. P. 24(f)(1), I certify that this brief contains 9,348 words, excluding the table of contents, table of authorities, addenda, and certificates of compliance and delivery. In compliance with the typeface requirements of Utah R. App. P. 27(b), I certify that this brief has been prepared in a proportionally spaced font using Microsoft Word 2010 in Times New Roman 13 point.

JOHN B. PLIMPTON

DELIVERED to the Utah Attorney General's Office and the Utah Court of Appeals as indicated above this 29 day of January, 2015.

INDEX TO ADDENDA

Tab A

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH, Plaintiff,	:	MINUTES SENTENCE, JUDGMENT, COMMITMENT
vs. JAMES RAPHAEL SANCHEZ, Defendant.	:	Case No: 111903659 FS Judge: DENISE P LINDBERG Date: July 14, 2014

Custody: USP

PRESENT
Clerk: shanadw
Prosecutor: BOEHM, MICHAEL P
Defendant
Defendant's Attorney(s): DELLAPIANA, RALPH

DEFENDANT INFORMATION
Date of birth: August 4, 1987
Sheriff Office#: 293137
Audio
Tape Number: CR N45 Tape Count: 2:53-

CHARGES
1. MURDER - 1st Degree Felony
Plea: Not Guilty - Disposition: 05/22/2014 Guilty
2. OBSTRUCTING JUSTICE - 2nd Degree Felony
Plea: Not Guilty - Disposition: 05/22/2014 Guilty

SENTENCE PRISON

Based on the defendant's conviction of MURDER a 1st Degree Felony, the defendant is sentenced to an indeterminate term of not less than fifteen years and which may be life in the Utah State Prison.

Based on the defendant's conviction of OBSTRUCTING JUSTICE a 2nd Degree Felony, the defendant is sentenced to an indeterminate term of not less than one year nor more than fifteen years in the Utah State Prison.

To the SALT LAKE County Sheriff: The defendant is remanded to your custody for transportation to the Utah State Prison where the defendant will be confined.

SENTENCE PRISON CONCURRENT/CONSECUTIVE NOTE

Terms are in run Concurrent with each other. Consecutive to case 111903658. Pay Restitution to the Board of Pardons, Crime Victim Reparations. Mr. Boehm to prepare and submit to the Court amount of Restitution owed.

Case No: 111903659 Date: Jul 14, 2014

ALSO KNOWN AS (AKA) NOTE

JAMES SANCHEZ
YOUNG SLEEPY BROWN
YOUNG SLEEPY

SENTENCE JAIL CONCURRENT/CONSECUTIVE NOTE

CUSTODY

The defendant is present in the custody of the Department of Corrections Utah State Prison - Draper.

Date: 7/14/14

DENISE [illegible]
District Court Judge

STATE OF UTAH
THIRD DISTRICT COURT
SALT LAKE CITY

Tab B

UTAH CODE § 76-5-203 (2012)

§ 76-5-203. Murder

(1) As used in this section, "predicate offense" means:

(a) a clandestine drug lab violation under Section 58-37d-4 or 58-37d-5;

(b) child abuse, under Subsection 76-5-109(2)(a), when the victim is younger than 18 years of age;

(c) kidnapping under Section 76-5-301;

(d) child kidnapping under Section 76-5-301.1;

(e) aggravated kidnapping under Section 76-5-302;

(f) rape of a child under Section 76-5-402.1;

(g) object rape of a child under Section 76-5-402.3;

(h) sodomy upon a child under Section 76-5-403.1;

(i) forcible sexual abuse under Section 76-5-404;

(j) sexual abuse of a child or aggravated sexual abuse of a child under Section 76-5-404.1;

(k) rape under Section 76-5-402;

(l) object rape under Section 76-5-402.2;
(m) forcible sodomy under Section 76-5-403;

(n) aggravated sexual assault under Section 76-5-405;

(o) arson under Section 76-6-102;

(p) aggravated arson under Section 76-6-103;

(q) burglary under Section 76-6-202;

(r) aggravated burglary under Section 76-6-203;

(s) robbery under Section 76-6-301;

(t) aggravated robbery under Section 76-6-302;

(u) escape or aggravated escape under Section 76-8-309; or

(v) a felony violation of Section 76-10-508 or 76-10-508.1 regarding discharge of a firearm or dangerous weapon.

(2) Criminal homicide constitutes murder if:

(a) the actor intentionally or knowingly causes the death of another;

(b) intending to cause serious bodily injury to another, the actor commits an act clearly dangerous to human life that causes the death of another;

(c) acting under circumstances evidencing a depraved indifference to human life, the actor knowingly engages in conduct which creates a grave risk of death to another and thereby causes the death of another;

(d)(i) the actor is engaged in the commission, attempted commission, or immediate flight from the commission or attempted commission of any predicate offense, or is a party to

the predicate offense;

(ii) a person other than a party as defined in Section 76-2-202 is killed in the course of the commission, attempted commission, or immediate flight from the commission or attempted commission of any predicate offense; and

(iii) the actor acted with the intent required as an element of the predicate offense;

(e) the actor recklessly causes the death of a peace officer or military service member in uniform while in the commission or attempted commission of:

(i) an assault against a peace officer under Section 76-5-102.4;

(ii) interference with a peace officer while making a lawful arrest under Section 76-8-305 if the actor uses force against a peace officer; or

(iii) an assault against a military service member in uniform under Section 76-5-102.4;

(f) commits a homicide which would be aggravated murder, but the offense is reduced pursuant to Subsection 76-5-202(4); or

(g) the actor commits aggravated murder, but special mitigation is established under Section 76-5-205.5.

(3)(a) Murder is a first degree felony.

(b) A person who is convicted of murder shall be sentenced to imprisonment for an indeterminate term of not less than 15 years and which may be for life.

(4)(a) It is an affirmative defense to a charge of murder or attempted murder that the defendant caused the death of another or attempted to cause the death of another under a reasonable belief that the circumstances provided a legal justification or excuse for the conduct although the conduct was not legally justifiable or excusable under the existing circumstances.

(b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from the viewpoint of a reasonable person under the then existing circumstances.

(c) This affirmative defense reduces charges only from:

(i) murder to manslaughter; and

(ii) attempted murder to attempted manslaughter.

(5)(a) Any predicate offense described in Subsection (1) that constitutes a separate offense does not merge with the crime of murder.

(b) A person who is convicted of murder, based on a predicate offense described in Subsection (1) that constitutes a separate offense, may also be convicted of, and punished for, the separate offense.

UTAH CODE § 76-5-205.5 (2012)

§ 76-5-205.5. Special mitigation reducing the level of criminal homicide offense--Burden of proof--Application to reduce offense

(1) Special mitigation exists when the actor causes the death of another or attempts to cause the death of another:

(a)(i) under circumstances that are not legally justified, but the actor acts under a delusion attributable to a mental illness as defined in Section 76-2-305;

(ii) the nature of the delusion is such that, if the facts existed as the defendant believed them to be in the delusional state, those facts would provide a legal justification for the defendant's conduct; and

(iii) the defendant's actions, in light of the delusion, were reasonable from the objective viewpoint of a reasonable person; or

(b) under the influence of extreme emotional distress for which there is a reasonable explanation or excuse.

(2) A defendant who was under the influence of voluntarily consumed, injected, or ingested alcohol, controlled substances, or volatile substances at the time of the alleged offense may not claim mitigation of the offense under Subsection (1)(a) on the basis of mental illness if the alcohol or substance caused, triggered, or substantially contributed to the mental illness.

(3) Under Subsection (1)(b), emotional distress does not include:

(a) a condition resulting from mental illness as defined in Section 76-2-305; or

(b) distress that is substantially caused by the defendant's own conduct.

(4) The reasonableness of an explanation or excuse under Subsection (1)(b) shall be determined from the viewpoint of a reasonable person under the then existing circumstances.

(5)(a) If the trier of fact finds the elements of an offense as listed in Subsection (5)(b) are proven beyond a reasonable doubt, and also that the existence of special mitigation under this section is established by a preponderance of the evidence, it shall return a verdict on the reduced charge as provided in Subsection (5)(b).

(b) If under Subsection (5)(a) the offense is:

(i) aggravated murder, the defendant shall instead be found guilty of murder;

(ii) attempted aggravated murder, the defendant shall instead be found guilty of attempted murder;

(iii) murder, the defendant shall instead be found guilty of manslaughter; or

(iv) attempted murder, the defendant shall instead be found guilty of attempted manslaughter.

(6)(a) If a jury is the trier of fact, a unanimous vote of the jury is required to establish the existence of the special mitigation.

(b) If the jury does find special mitigation by a unanimous vote, it shall return a verdict on the reduced charge as provided in Subsection (5).

(c) If the jury finds by a unanimous vote that special mitigation has not been established, it shall convict the defendant of the greater offense for which the prosecution has established all the elements beyond a reasonable doubt.

(d) If the jury is unable to unanimously agree whether or not special mitigation has been established, the result is a hung jury.

(7)(a) If the issue of special mitigation is submitted to the trier of fact, it shall return a special verdict indicating whether the existence of special mitigation has been found.

(b) The trier of fact shall return the special verdict at the same time as the general verdict, to indicate the basis for its general verdict.

(8) Special mitigation under this section does not, in any case, reduce the level of an offense by more than one degree from that offense, the elements of which the evidence has established beyond a reasonable doubt.

UTAH CODE § 76-8-306 (2012)

§ 76-8-306. Obstruction of justice in criminal investigations or proceedings --Elements--Penalties--Exceptions

(1) An actor commits obstruction of justice if the actor, with intent to hinder, delay, or prevent the investigation, apprehension, prosecution, conviction, or punishment of any person regarding conduct that constitutes a criminal offense:

(a) provides any person with a weapon;

(b) prevents by force, intimidation, or deception, any person from performing any act that might aid in the discovery, apprehension, prosecution, conviction, or punishment of any person;

(c) alters, destroys, conceals, or removes any item or other thing;

(d) makes, presents, or uses any item or thing known by the actor to be false;

(e) harbors or conceals a person;

(f) provides a person with transportation, disguise, or other means of avoiding discovery or apprehension;

(g) warns any person of impending discovery or apprehension;

(h) warns any person of an order authorizing the interception of wire communications or of a pending application for an order authorizing the interception of wire communications;

(i) conceals information that is not privileged and that concerns the offense, after a judge or magistrate has ordered the actor to provide the information; or

(j) provides false information regarding a suspect, a witness, the conduct constituting an offense, or any other material aspect of the investigation.

(2)(a) As used in this section, "conduct that constitutes a criminal offense" means conduct that would be punishable as a crime and is separate from a violation of this section, and includes:

(i) any violation of a criminal statute or ordinance of this state, its political subdivisions, any other state, or any district, possession, or territory of the United States; and

(ii) conduct committed by a juvenile which would be a crime if committed by an adult.

(b) A violation of a criminal statute that is committed in another state, or any district, possession, or territory of the United States, is a:

(i) capital felony if the penalty provided includes death or life imprisonment without parole;

(ii) a first degree felony if the penalty provided includes life imprisonment with parole or a maximum term of imprisonment exceeding 15 years;

(iii) a second degree felony if the penalty provided exceeds five years;

(iv) a third degree felony if the penalty provided includes imprisonment for any period exceeding one year; and

(v) a misdemeanor if the penalty provided includes imprisonment for any period of one year or less.

(3) Obstruction of justice is:

(a) a second degree felony if the conduct which constitutes an offense would be a capital felony or first degree felony;

(b) a third degree felony if:

(i) the conduct that constitutes an offense would be a second or third degree felony and the actor violates Subsection (1)(b), (c), (d), (e), or (f);

(ii) the conduct that constitutes an offense would be any offense other than a capital or first degree felony and the actor violates Subsection (1)(a);

(iii) the obstruction of justice is presented or committed before a court of law; or

(iv) a violation of Subsection (1)(h); or

(c) a class A misdemeanor for any violation of this section that is not enumerated under Subsection (3)(a) or (b).

(4) It is not a defense that the actor was unaware of the level of penalty for the conduct constituting an offense.

(5) Subsection (1)(e) does not apply to harboring a youth offender, which is governed by Section 62A-7-402.

(6) Subsection (1)(b) does not apply to:

(a) tampering with a juror, which is governed by Section 76-8-508.5;

(b) influencing, impeding, or retaliating against a judge or member of the Board of Pardons and Parole, which is governed by Section 76-8-316;

(c) tampering with a witness or soliciting or receiving a bribe, which is governed by Section 76-8-508;

(d) retaliation against a witness, victim, or informant, which is governed by Section 76-8-508.3; or

(e) extortion or bribery to dismiss a criminal proceeding, which is governed by Section 76-8-509.

(7) Notwithstanding Subsection (1), (2), or (3), an actor commits a third degree felony if the actor harbors or conceals an offender who has escaped from official custody as defined in Section 76-8-309.

UTAH R. EVID. 106

RULE 106. REMAINDER OF OR RELATED WRITINGS OR RECORDED STATEMENTS

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

Tab C

IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,	:	Case No. 111903659 FS
	:	
Plaintiff,	:	Appellate Court Case No. 20140749
	:	
v	:	Volume III of IV
	:	
JAMES RAPHAEL SANCHEZ,	:	
	:	
Defendant.	:	With Keyword Index

JURY TRIAL MAY 19, 20, **21**, & 22, 2014

BEFORE

THE HONORABLE DENISE P. LINDBERG

CAROLYN ERICKSON, CSR
CERTIFIED COURT TRANSCRIBER
1775 East Ellen Way
Sandy, Utah 84092
801-523-1186

THE COURT: Okay -

MR. BOEHM: He didn't - I can voir dire the witness and we can direct (inaudible). We can even recall him from (inaudible). We never introduced a statement of Angela Jenkins (inaudible).

MR. DELLAPIANA: I've got some other things while we're standing here. I'm convinced that the right to cross examine is more than adequate for this situation, but Rule 106, the completeness rule, when a party introduces part of a recorded statement - this was a recorded statement -

THE COURT: I do (inaudible), the completeness rule speaks to completing that statement, where only a fragment of the statement is brought in, not to bring in something that is pages away from the statement that -

MR. DELLAPIANA: Well, I disagree.

THE COURT: - was allegedly brought in. So -

MR. DELLAPIANA: I disagree.

THE COURT: - as I see the completeness rule is, if you're asking someone to read a fraction of a statement, and that statement on its own or that - without introducing the complete - that whole complete statement, it leaves a misleading indication, then the completeness rule applies. But, to seek -

MR. DELLAPIANA: Well, I - that's where we are.

THE COURT: No, we're talking about something that

you're telling him is page - something arising on page 8. This statement - the statement you were referencing is, I'm being told is on page 24. I don't know, I don't have those in front of me. But, based on that, I don't believe that the completeness rule applies.

MR. DELLAPIANA: Well...

THE COURT: So, if that's your basis -

MR. DELLAPIANA: Well, I'm going to ask the question in a different way.

THE COURT: Well -

MR. DELLAPIANA: If he wants to -

THE COURT: - you better clear it through me.

MR. BOEHM: Yeah, I would ask for that (inaudible) that he can't just (inaudible).

THE COURT: Yeah. No. I don't - I don't want this tainting the jury. You tell me what it is that you're going to ask.

MR. DELLAPIANA: Okay. Well, I'm going to ask a question regarding Mr. Sanchez's explanation for the - for the assault.

THE COURT: Then -

MR. BOEHM: (Inaudible) -

MR. DELLAPIANA: This is something that goes to his own statement. Regardless of the truth of whether - of anything she said, he believed -

THE COURT: Then it doesn't - but it's not a statement against the party. It's his own statement that is arguably self serving.

MR. DELLAPIANA: Well, that's for the jury to -

THE COURT: If he wants to take the stand and say it, then that's fine. But -

MR. DELLAPIANA: Well, tell you what, we can spend the rest of the afternoon with me cross examining this guy on the record and send it up on appeal then, because that's the defense. That's our defense.

MR. BOEHM: I mean, we filed a motion in limine that was - talked about the 412, we talked about this yesterday, everybody knew that this was going to be a tactic that might be employed, but I think that everybody has to recognize that either one doesn't allow the statement unless it's offered against (inaudible), defense counsel represents the defendant (inaudible) cannot ask this witness -

MR. DELLAPIANA: I think we used that argument.

THE COURT: Yes, you did.

MR. DELLAPIANA: I'm - (inaudible), I specifically said, I am not using a party opponent language rule as a way to introduce a statement of my client. I -

THE COURT: That's true, what you said is that you would elicit it through somebody else's testimony. And what I said to you is, if you're seeking to introduce it through

somebody else, it needs to be consistent with the rules of evidence, and it cannot be a statement of the individual. I said - and I also said that if you, you know, clearly he has the right to testify, he clearly has a right not to testify. But, if he - if you want to put that in, you're not eliciting it on the basis of hearsay.

MR. DELLAPIANA: Well, tell you what, Your Honor. I will attempt to ask some different questions about different things, and then when I'm done with what is hopefully unobjectionable testimony, I'll either - I'll bring it to everybody's attention that I'm ready to make -

THE COURT: We will discuss this off the record with the jury - out of the presence -

MR. DELLAPIANA: Yeah. Okay.

THE COURT: - of -

MR. BOEHM: Well, and my concern is that - I mean, the Court's asking what he - what defense counsel intends to ask, because defense counsel seems unfortunately opposed to the Court's ruling, and I think -

MR. DELLAPIANA: True. Anyway, go ahead.

MR. BOEHM: Right? And I think the issue is, there's a very big difference between what (inaudible) yesterday when the State asked a question and got an unexpected response, it was not elicited by the State's question. And defense counsel thinks he's going to say,

Well, what did defendant say about this? (Inaudible) say about this, and explain that it - the cat's out of the bag, and he's done it intentionally, and knowing that it's not admissible, that it's hearsay and that it can't be used. So I would ask for a warning that he not do that.

THE COURT: Don't tempt me, Mr. Dellapiana.

MR. DELLAPIANA: I can't - I'll tell you - I'm going to do my best -

THE COURT: Your responsibility is - you need to - your responsibility is to put in, if you wish to put in evidence that would support a - by a preponderance of the evidence a standard that you've (inaudible) on some basis.

MR. DELLAPIANA: Sure.

THE COURT: Admissible evidence.

MR. DELLAPIANA: Right.

THE COURT: But, you're not going to be introducing or leading into something that would be objectionable statements.

MR. DELLAPIANA: We'll see.

THE COURT: Just to get that on the record -

MR. DELLAPIANA: I will try.

THE COURT: - that will not happen.

MR. DELLAPIANA: I will try not to do that.

THE COURT: No. No. You will not do that.

MR. DELLAPIANA: I may end up the afternoon with my

client in custody, but not on trial.

(End of sidebar)

MR. BOEHM: Your Honor, can we just make a finding that the State has objected based on the hearsay and hear what the Court's ruling on that -

THE COURT: The State has objected; I have sustained the objection.

MR. BOEHM: Thank you, Your Honor.

Q (BY MR. DELLAPIANA) Okay. This cross examination may be shorter than I intended.

The length of the fight - you asked him about how long the fight went on.

A I did.

Q And he said it was for a couple of hours.

A Yes.

Q You described it as last - him saying another time it was last night. Do you remember that?

A I do.

Q Okay, is that fair to - for most people that can mean sometime before dawn? I mean, we refer to - oh, it happened last night, could be in the middle of the night.

A I - I would assume so. Yeah.

Q All right. You asked him about - he told you that he had choked her and that she kind of lost consciousness, right?

INSTRUCTION NO. _____

Where there is a conflict in the evidence you should reconcile such conflict as far as you reasonably can. But where the conflict cannot be reconciled, you are the final judges and must determine from the evidence what the facts are. There are no definite rules governing how you shall determine the weight or convincing force of any evidence, or how you shall determine what the facts are in this case. But you should carefully and conscientiously consider and compare all of the testimony, and all of the facts and circumstances, which have a bearing on any issue, in order to determine what the facts are.

INSTRUCTION NO. _____

You are instructed that the defendant is a competent witness in his own behalf and has the right to go upon the witness stand and testify if he chooses to do so. However, the law expressly provides that no presumption adverse to him is to arise from the mere fact that he does not place himself upon the witness stand.

In deciding whether or not to testify, the defendant may choose to rely on the state of the evidence and upon the failure, if any, of the State to prove every essential element of the charge against him. The fact that this defendant has not availed himself of the privilege which the law gives him should not prejudice him in any way. It should not be considered as any indication of either his guilt or his innocence.

INSTRUCTION NO. _____

You are instructed that the defendant is a competent witness on his own behalf. The defendant's testimony should be received and given the same consideration as you give to that of any witness. The fact that the defendant stands accused of a crime is no evidence of his guilt and no reason for rejecting his testimony. However, you should weigh the defendant's testimony the same as you weigh the testimony of any other witness.

INSTRUCTION NO. _____

The State of Utah and the defendant both are entitled to the individual opinion of each juror. It is the duty of each of you after considering all the evidence in the case, to determine, if possible, the question of guilty or innocence of the defendant. When you have reached a conclusion in that respect you should not change it merely because one or more of all of your fellow jurors may have come to a different conclusion. However, the jurors should freely and fairly discuss the evidence and the deductions to be drawn therefrom. If, after doing so, any juror should be satisfied that a conclusion first reached was wrong, the juror unhesitatingly should abandon that original opinion and render the juror's verdict according to the final decision.

INSTRUCTION NO. ____

Before you can find the defendant, James Raphael Sanchez, of the offense of Obstruction of Justice, as charged in Count II of the Information, you must find from all of the evidence and beyond a reasonable doubt each one of the following elements of that offense, occurring on or about the 5th day of May, 2011, in Salt Lake County, Utah:

1. That the defendant, James Raphael Sanchez:
   (a) prevented by force, intimidation, or deception, any person from performing any act that might aid in the discovery, apprehension, prosecution, conviction, or punishment of any person; or
   (b) altered, destroyed, concealed, or removed any item or other thing;
2. The the defendant acted with intent to hinder, delay, or prevent the investigation, apprehension, prosecution, conviction, or punishment of any person regarding conduct that constitutes a criminal offense;
3. The defendant's conduct constituted the criminal offense of murder.

If, after careful consideration of all of the evidence in this case, you are convinced beyond a reasonable doubt of each one of the foregoing elements, then you must find the defendant Guilty of Obstructing Justice as charged in Count II of the Information. If, on the other hand, you are not convinced beyond a reasonable doubt of any one or more of the foregoing elements, then you must find the defendant Not Guilty as to Count II.

INSTRUCTION NO. _____

Under the law of the State of Utah, strangulation constitutes "serious bodily injury."

INSTRUCTION NO. _____

When you retire to consider your verdict, you will select one of your members to act as foreperson, who, as foreperson, will preside over your deliberations.

Your verdict in this case must be either:

As to Count I:

Guilty of Murder; or

Not Guilty of Murder.

As to Count II:

Guilty of Obstruction of Justice; or

Not Guilty of Obstruction of Justice.

This being a criminal case, a unanimous concurrence of all jurors is required to find a verdict. Your verdict must be in writing, and when found, must be signed and dated by your foreperson and then returned by you to this court. When your verdict has been found, notify the bailiff that you are ready to report to the court.

Dated at Salt Lake City, Utah, this _____ day of _____, 20____.

_____

JUDGE

CERTIFICATE OF DELIVERY

I hereby certify that on the 5th day of September, 2013, true and correct copies of the foregoing PLAINTIFF'S REQUESTED JURY INSTRUCTIONS were made available to the attorney listed below for the defendant by hand delivery.

Emily Gaffin
Certified Paralegal

Ralph Dellapiana
Attorney for Defendant
424 East 500 South, Suite 300
Salt Lake City, Utah 84111

CERTIFICATE OF RECEIPT

I hereby certify that I, (please print name) _____, acknowledge receiving the above described PLAINTIFF'S REQUESTED JURY INSTRUCTIONS on the ____ day of _____, 2____, and further certify that this Certificate of Receipt was signed for at the Salt Lake County District Attorney's Office or returned the Certificate of Receipt via facsimile transmission to the Salt Lake County District Attorney's Office at 801-531-4110 on the ____ day of _____, 2_____.

_____

Kristin Ferguson <kristinf@utcourts.gov>

Tagalog interpreter for jury trial - 111903659

1 message

Evangelina Burrows <evangelinab@utcourts.gov> Tue, Sep 10, 2013 at 11:20 AM
To: Kristin Ferguson <kristinf@utcourts.gov>

A Tagalog interpreter has been requested by the DA's office for a witness in case 111903659, which is set for trial on Sept 17. Nelia Justiniano will be interpret on that date, but must leave by 3:00 pm because she teaches a class in Provo.

I'm still trying to find a second Tagalog interpreter to help with this jury trial.

RALPH DELLAPIANA (6861)
TRENTON RICKS (7770)
Attorneys for Defendant
SALT LAKE LEGAL DEFENDER ASSOCIATION
424 East 500 South, Suite 300
Salt Lake City, Utah 84111
Telephone: 532-5444

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,	:	DEFENDANT'S REQUESTED QUESTIONS TO THE JURY PANEL ON VOIR DIRE
Plaintiff,	:	
v.	:	
JAMES RAPHAEL SANCHEZ,	:	Case No. 111903659 FS
Defendant.	:	JUDGE DENISE LINDBERG

The defendant, James Sanchez, by and through his attorneys of record, respectfully submits the following interrogatories for the voir dire of the prospective jurors in the above-numbered case.

GENERAL INFORMATION

1. Where are you employed?
2. What are your duties there?
3. How long have you been so employed?
4. Do you have any plans for a change of employment in the near future?
5. Have you had any different type of employment for a significant period of time?
6. What is your marital status?

7. Where is your spouse employed?

8. What are his or her duties at that place of employment?

9. Please state your race.

10. Do you have any children? If so:

State the age and sex of each of these children.

Which of these children reside with you?

Are any of these adult children employed? If so:

Describe the nature and length of this employment.

11. Do you belong to any clubs or organizations? If so:

What clubs or organizations do you belong to?

12. What are your hobbies and leisure time activities?

13. What do you rely on for your sources of information, i.e., newspapers, magazines, television, radio, or word of mouth?

14. Do you subscribe to any publications (including newspapers)? If so: which ones?

15. Have you lived in any place other than Salt Lake County for any length of time?

If so:

Where did you live before you came here?

Why did you decide to move to Salt Lake County?

16. Have any of you ever served in the Armed Forces?

17. What is your educational background?

18. What subject did you major in if college education?

19. Do any of you have any close friends or relatives who are lawyers who practice criminal law or who, in the past, practiced criminal law?

What is the name of that friend or relative?

Where does he or she practice law?

Would this prevent you in any way in following the instructions on the law as given to you by this court?

20. Do any of you know the attorneys in this case?

21. Do any of you know any of the State's or defense witnesses?

22. Do any of you know the defendant, James Sanchez, or any member of his family?

23. Do you know anyone employed at the Salt Lake County District Attorney's office?

EXPERIENCE WITH LAW ENFORCEMENT

24. Have any of you ever been employed in any sort of law enforcement capacity? If so, when and where?

25. Do any of you have close friends or relatives who have been employed by any law enforcement agency?

If so, name the friend or relation and the agency he or she worked for.

Would this relationship in any way affect your ability to sit on this jury in a fair and impartial manner?

26. Are there any of you who would tend to give more credibility or weight to the testimony of a police officer merely because he or she is a police officer, than you would to any other witness?

PRIOR JURY AND WITNESS EXPERIENCE

27. Have any of you ever served on a jury before? If so:

What type of case was it?

When was the trial?

Were you the foreperson?

What was the verdict?

Would that experience affect your ability to serve on this jury in a fair and impartial manner?

28. Have any of you ever been called as a witness in court before? If so:

What type of case was it?

What was the trial or hearing?

When was the trial or hearing?

Would that experience affect your ability to serve on this jury in a fair and impartial manner?

PRIOR EXPERIENCE AS A VICTIM OF OR WITNESS TO CRIME OR AS A DEFENDANT

29. Have any of you or your close friends or relatives ever been the victim of a criminal offense? If so:

What was the nature of the offense?

Was anybody charged, arrested or convicted of that offense?

Would that experience affect your ability to serve on this jury in a fair and impartial manner?

30. Have any of you or your close friends or relatives ever been accused of a crime before? If so:

What was the nature of the charge?

What was the final disposition of the case?

Would that experience affect your ability to serve on this jury in a fair and impartial manner?

31. Have any of you, your close friends, or relatives ever been a witness to a crime? If, so, please describe.

Was that a traumatic experience?

Would that experience affect your ability to be a fair and impartial juror in this case?

ABILITY TO BE A FAIR AND IMPARTIAL JUROR

32. Have any of you been involved with any group whose goals are to make changes in the criminal justice system? If so, what group? What was your involvement?

33. Would any of you prefer, for any reason, not to sit on this case? If so, why do you not want to sit on this jury?

34. Are there any of you who are not in such a fair and impartial state of mind that you would not be satisfied to have a juror possessing your mental state judge the evidence if you or your loved ones were on trial here? In other words, would you want someone with your state of mind sitting as a juror on a case if you were the defendant?

35. Do any of you have any physical problems which would interfere with your ability to be a juror in this case?

36. Do any of you have any negative feelings or opinions about defense attorneys? About prosecutors?

Would those feelings or opinions interfere with your ability to be a fair and impartial juror in this case?

DEFENDANT'S PRESUMPTION OF INNOCENCE AND RIGHT TO TESTIFY

37. Does the mere fact that Mr. Sanchez is charged with this offense in the Information cause any of you to believe that he is probably guilty as charged?

38. Do you now presume Mr. Sanchez to be innocent of the crime as charged?

39. Do any of you feel Mr. Sanchez is more likely than not guilty because he has been charged with a crime?

40. Do any of you feel that Mr. Sanchez has, or should have a burden to prove his innocence?

41. Do you understand that Mr. Sanchez has no obligation to testify?

42. Do you nevertheless feel he should come forward and testify?

43. Do you promise to place no burden on Mr. Sanchez to prove his innocence, but rather require the State to prove guilt beyond a reasonable doubt before you could convict Mr. Sanchez of a criminal offense?

44. If Mr. Sanchez were to testify, would you give his testimony the same weight and credit that you would give to any other witness?

ABILITY TO INTERACT WITH OTHER JURORS

45. If, after hearing the evidence, you came to the conclusion that the prosecution had not proven the guilt of the accused beyond a reasonable doubt, and you found that a majority of the jurors believed the defendant was guilty, would you change your verdict only because you were in the minority?

46. Are there any of you who would not give the benefit of your own individual judgment in arriving at a verdict in this case?

47. Do any of you jury panelists know each other? If so, explain how you know each other.

Would that acquaintance interfere with your ability to be a fair and impartial juror if you and the person you know are selected to sit on the jury in this case?

QUESTIONS SPECIFIC TO THIS CASE

48. Have any of you, your close friends, or family members at any time been the victim of domestic violence? (The defendant suggests that members of the jury panel who answer affirmatively be allowed to answer the following questions privately in chambers.) If so:

What were the circumstances of the incident?

Was anyone charged with a crime regarding that incident?

If so, what was the result?

Would that experience make it hard for you to be fair and impartial in this case?

49. Have any of you ever received any education or training in the area of domestic violence and/or performed any volunteer or salaried work with victims of domestic violence?

If so, please describe that education/training/experience.

Would that experience affect your ability to serve on this jury in a fair and impartial manner?

50. Have any of you, your family members, or close friends been accused, arrested or charged with a crime involving an accusation of domestic violence? (The defendant suggests that members of the jury panel who answer affirmatively be allowed to answer the following questions privately in chambers).

If so, what was the nature of the allegation?

What happened in court, if the matter was prosecuted?

Would that experience make it hard for you to be fair and impartial in this case?

51. Would the fact that the defendant is alleged to have committed domestic violence resulting in the death of the victim make it hard for you to be a fair and impartial juror in this case?

DATED this 12 day of September, 2013.

Ralph Dellapiana
Trenton Ricks
Attorneys for Defendant

MAILED/DELIVERED a copy of the foregoing to the Salt Lake District Attorney's Office, 111 East Broadway, Suite 400, Salt Lake City, UT, 84111, this 12 day of September, 2013.

sld

IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE

SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,	:	Case No. 111903659 ES
	:	
Plaintiff,	:	Appellate Court Case No. 20140749
	:	
v	:	Volume IV of IV
	:	
JAMES RAPHAEL SANCHEZ,	:	
	:	
Defendant.	:	With Keyword Index

JURY TRIAL MAY 19, 20, 21, & 22, 2014

BEFORE

THE HONORABLE DENISE P. LINDBERG

CAROLYN ERICKSON, CSR
CERTIFIED COURT TRANSCRIBER
1775 East Ellen Way
Sandy, Utah 84092
801-523-1186

didn't he tell you that, I think I might have killed her? That's a question that simply required a yes or no answer. At that point Mr. Warner then, you know, volunteered the statement that added the - at this - you know, "this time." The statement, as has been noted, the jury thereafter, at the conclusion of the testimony of Mr. Warner, was given the opportunity to ask questions of Mr. Warner. In no way was there any question that was - that picked up or responded to any suggestion that arguably could've come from that volunteered statement. It seems to me that if the issue had been present in the minds of the jury, that would've been the time when that question would've been expected, not at the conclusion of the State's case a day later.

Additionally, I must consider the totality of the evidence that has been admitted, including most notably the extensive admissions by the defendant himself. Considering that the statement was made in passing, it was not dwelt upon by either counsel or the Court, the matter moved on, and when compared to the totality of the evidence, it is - if it was error, it was at best harmless error.

Now, the defense has sought to introduce, through the testimony of Detective Reyes, evidence regarding certain statements made by the defendant, I am understanding, or I'm assuming, for the purpose of establishing a basis for asserting the special mitigation defense of extreme emotional

distress. Specifically, the defense wishes to introduce statements either allegedly made by the victim, either admitting or suggesting that she'd been involved sexually with the defendant's brother, and/or defendant's own statements of his belief that the victim was having sexual relations with his brother. The defense counsel has offered various alternative grounds for why that testimony should be heard by the jury. Specifically, the defense contends that failure to allow that evidence violates the Sixth Amendment Confrontation Clause, that the testimony is admissible under the Rule of Completeness and/or Rule 106 of the Utah Rules of Evidence, under some unspecified rule, which I understood to be 608C, to show bias on the detective's part; as a non-hearsay statement under 801C2, because it's not being offered for the truth of the matter asserted, or as hearsay that falls within the then existing state of mind exception under Rule 803-3.

I have considered each of these grounds separately, and I conclude that none of them form a basis for allowing introduction of that testimony. In making that consideration, I have read all of the cases that were cited by the defense and provided to me, as well as my own research.

With respect to the Sixth Amendment argument, the Confrontation Clause speaks to the defendant's right to be

confronted with witnesses against him. To the extent he is seeking to elicit his own exculpatory statements through the detective, on its face it is clear that his statements are not the statements of a witness against him. To the extent that he's seeking to elicit statements he attributes to the decedent, they would at best be double hearsay, none of which falls under an exception was cited. At worst, he would be unable to benefit from the victim's unavailability, that by his own admission he created, and the alleged statements would not fall within any of the exceptions to Rule 804.

As to his arguments about - based on the - it was originally cited as the Rule of Completeness. But I will discuss it under both Rrule of Completeness and 106, because the defense subsequently submitted a document making a case under 106. The Rule of Completeness is a common law rule. Our Supreme Court has held that, where the oral - and it's a strictly oral statement, it's not been reduced to writing, the Rule of Completeness may apply under Rule 611. That was not argued to the Court. And certainly no analysis has been put forward with respect to Rule 611. But, in any event, the Rule of Completeness does not apply in a case like this one where, what we have at issue, is the defendant's contemporaneously recorded interview, which was then transcribed, and in State versus Leleae, I'm not pronouncing that correctly, but it's L-E-L-E-A-E, 993 P 3rd 232. In that

case, the - a detective conducted an interview with the defendant. The defendant's statements were tape recorded and then transcribed. At trial, the defendant's statements against interest were introduced through the detective. The court found that, although the defendant's oral statement was introduced through the detective, the statements were recorded and transcribed, and Rule 106 applied - actually, were sought to be introduced. The appellate court upheld the denial of the defense's motion to introduce the entire statement of the defendant for the purpose of, quote, "putting the prosecution's requested portion in context." The Court of Appeals held that the trial court had not abused its discretion, and decided that this statement should be included - excluded.

In this case, as in that - and that one, the defendant's oral statement during his interview with Detective Reyes was recorded and transcribed. As such, they fall within 106, and not under the Rule of Completeness referenced by the defense in its argument initially. Under 106, the Court must apply a fairness standard in evaluating the need for admitting the remainder of a written or recorded statement. And under that standard, the court needs to admit only those things that are relevant and necessary to qualify, explain, or place into context the portion that has already been introduced. Here, the defendant seeks to admit

statements that are essentially a self-serving, after-the-fact explanation for his conduct in assaulting the victim, and that portion of that overall interview was temporally removed from the inculpatory statements that had been received without objection on the basis of 801-B-2.

I conclude that the fairness analysis does not require the admission of the statements offered to explain the reasons for his brutal assault on the victim.

Now, initially the defense cited State versus Cruz Meza in support of his claim that the statement should be received. I disagree. In Cruz Meza, the defendant confessed of his murder to a third person, which was an oral statement. There the trial court analyzed it essentially under the common law rule and excluded it on the basis that the statements were not made spontaneously, and lacked the indicia of trustworthiness or reliability. The Supreme Court upheld the trial court's exercise of its discretion.

In any event, I believe Cruz Meza is distinguishable, because the statement at issue was a strictly oral statement, and the admissibility analysis was made under the common law Rule of Completeness, not under 103, which the defense has now made clear it is - that is the sole basis that it is proceeding under.

MR. DELLAPIANA: You mean 106? Or -

THE COURT: I'm sorry, 106. I apologize.

MR. DELLAPIANA: Oh.

THE COURT: I mis-spoke.

Now, I will note that that last analysis or statement submitted by the defense was done as, quote, a reply to the State's motion in limine. I remind counsel that I had stricken the State's motion, and had not considered the motion in limine because it had been untimely filed. So there really was nothing to reply to. But, I had invited counsel to submit any additional briefing, which the State has now provided, and which the defense provided to me yesterday evening.

I also find no merit in the argument that the defendant's statement must be received presumably under Rule 608C to show the detective's alleged bias. The defense has certainly not pointed to any specific facts that would support or show that Detective Reyes's testimony was simply factually reported on the defendant's inculpatory statements, is in any way tainted by bias. The detective's testimony was nothing more than a straightforward response to questions put to him by both the prosecution and the defense.

I similarly reject their claim that the statement is not being offered for the truth of the matter asserted, and therefore it's not hearsay. If the defendant's explanatory statement is, in fact, not being offered for the truth of the matter asserted, then the defense has failed to